of Lord Kingsdown in *Ramsden* v. *Dyson*.[5] If I may say so, after reading the judgment in that case, the rule propounded by Lord Kingsdown seems to have been expressed in the alternative. On the one hand, he said on page 170:

"If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in *Gregory v. Mighell*,[6] and, as I conceive, is open to no doubt."

On the other hand he continued —

"If, on the other hand, a tenant being in possession of land, and knowing the nature and extent of his interest, lays out money upon it in the hope or expectation of an extended term or an allowance for expenditure, then, if such hope or expectation has not been created or encouraged by the landlord, the tenant has no claim which any Court of law or equity can enforce. This was the principle of the decision in *Pilling* v. *Armitage*,[7] and, like the decision in *Gregory* v. *Mighell*, seems founded on plain rules of reason and justice."

Having thus stated the rule, he went on to say:

"The whole question, I think, in this case, is, within which class does the present claim fall; a point which, of course, depends entirely on the effect of the evidence."

Clearly, therefore, until a decision on the evidence is reached in this case it is not possible to say within which class the appellant's claim would fall.

In all the circumstances of this case so far as these are ascertainable from the affidavits, the appellant has shown that for the purpose of Order 14, he has a case to go to trial. The principle under this order has been stated in numerous cases of which *Jacob* v. *Booth's Distillery Company, supra*, is in the forefront I do not propose to refer to them except to recall the words of Lord Halsbury in *Jones* v. *Stone*[8] on page 124 as follows:

"The proceeding established by that order" (Order 14) "is a peculiar proceeding, intended only to apply to cases where there can be no reasonable doubt that a plaintiff is entitled to judgment, and where, therefore, it is inexpedient to allow a defendant to defend for mere purpose of delay."

On the affidavits it is impossible to say that the landlord is clearly entitled to judgment.

Accordingly, I would allow this appeal with costs to be in the cause. There will also be an order that the appellant files his defence within two weeks from today.

Appeal allowed.

Solicitors: *S. Seenivasagam & Sons; Lim Cheng Ean & Co.*

PRIVY COUNCIL REPORT

RAMOO v. GAN SOO SWEE & ANOR.

[P.C. (Lord Hodson, Lord Wilberforce and Lord Cross of Chelsea) May 4, 1971]

[Privy Council Appeal No. 22 of 1969]

Negligence — Highway — Junction controlled by traffic lights — Defective lights — Collision — Duty of care.

Damages — Negligence — Personal injuries — Apportionment of liability — When varied.

This was an appeal against the decision of the Federal Court ([1969] 1 M.L.J. 59), reversing the decision of the High Court ([1968] 2 M.L.J. 66) in a claim for damages for personal injuries sustained in a collision between a taxi and a lorry. The collision occurred at a junction controlled by traffic lights which at the relevant time appeared to be defective.

Buttrose J. in the High Court found that the traffic lights were defective but held that the respective drivers of the taxi and the lorry were aware of this. He apportioned the blame at 75% on the lorry driver and 25% on the taxi driver.

The Federal Court, setting aside the finding of Buttrose J., held that there was no evidence that either the driver of the lorry or the taxi knew that the traffic lights were defective and that in the circumstances, the plaintiff had failed to prove that either or both the drivers were negligent. The plaintiff (respondent) appealed to the Privy Council.

The crucial question to be decided was whether either the taxi driver or the lorry driver or both of them should have realised that the lights were out of order and whatever colour they might happen to be when they passed them, it was their duty to proceed with caution because of the possibility that a vehicle might enter the crossing from the other road at the same time.

Held, allowing the appeal: (1) according to the evidence, the traffic lights facing the taxi driver were changing colour very quickly; he was driving down a straight road; and there was nothing to obstruct his view of the lights. If he had been keeping a proper look-out he would — one would suppose — have realized that the lights were out of order and have slowed down at the crossing — but in fact he continued to drive on to the crossing at about 40 miles an hour. In the absence of any evidence from him as to when he first saw the lights and what impression they made on him, the natural inference is that he was not keeping a proper look-out and that his failure to keep a proper look-out caused or contributed to the accident;

(2) the plaintiff (appellant) was a passenger who was under no duty to keep the lights under observation;

(3) the plaintiff was under no duty to adduce evidence to the effect that the lights were changing so quickly that the taxi driver, if he was keeping a proper look-out, must have realized that they were not functioning properly, in order to succeed;

(4) the trial judge was justified in holding not only that the lorry driver was not keeping a proper look-out, but that on the balance of probability his failure to do so was a contributory cause of the accident;

(5) that only in exceptional circumstances will an appellate court be justified in interfering with an apportionment of liability made by the trial judge. Such circumstances do not exist here.

[Editorial Note: It is interesting to note that in *Ngui Kee Siong* v. *Guan Soo Swee & Anor.* [1970] 2 M.L.J. 46, a case which arose out of the same accident, Winslow J. found both the taxi driver and the lorry driver negligent and apportioned liability to the extent of 1/3 and 2/3 respectively, and awarded $27,000 as general damages.]

Cases referred to:-

(1) *Joseph Eva, Ltd.* v. *Reeves* [1938] 2 K.B. 393.

(2) *Wilson* v. *West and the Western S.M.T. Co. Ltd.* [1947] S.C. 198.

(3) *The Macgregor* [1943] A.C. 197.

PRIVY COUNCIL.

Ian Baillieu and *Howard Cashin* for the appellant.

K. E. Hilborne for the first respondent.

Marcus Anwyl-Davies Q.C. and *Yap Tyou Min* for the second respondent.

Lord Cross of Chelsea (delivering the judgment of the Board): This is an appeal with the leave of the Federal Court of Malaysia from a judgment of that court given on 7th November 1968 whereby it set aside a judgment of Buttrose J. dated 31st May 1968 awarding the appellant Ramoo s/o Erulapan — the plaintiff in the action — 30,000 dollars damages in respect of injuries which he suffered as a result of a collision between a taxi cab driven by the first respondent Gan Soo Swee in which the appellant was a passenger and a lorry driven by the second respondent Ong Ah Ho. The judge held that the lorry driver was three quarters and the taxi driver one quarter to blame for the accident and apportioned the damages accordingly. The Federal Court held that neither driver was to blame. Assuming liability on the part of one or other or both drivers no question arises as to the amount of the damages.

The accident happened at about 8 a.m. on Sunday, 10th July 1966 on the junction between Dunearn Road and Whitley Road in Singapore. Dunearn Road is a one way road running north and south which carries traffic coming from the north into the City. Whitley Road is a dual carriageway running east and west. A little to the west of the intersection Whitley Road reaches another road called Bukit Timah Road which runs parallel to Dunearn Road and is a one way road carrying northbound traffic out of the city. The continuation of Whitley Road to the west of Bukit Timah Road is called Stevens Road. Both intersections were controlled by traffic lights which were synchronised with each other. Dunearn Road and Whitley Road are each straight roads for a considerable distance to the north and to the east respectively of their point of intersection and the evidence was that there was no other traffic about. Consequently there was nothing to prevent a vehicle travelling southwards along Dunearn Road from seeing the traffic lights facing him at the north-east corner of the junction well before he reached the junction or when he got near the junction from seeing traffic approaching the junction along Whitley Road. Similarly there was nothing to prevent a vehicle travelling westward along the south side of Whitley Road from seeing the traffic lights facing him on the south-east corner of the junction well before he reached them or when he got near to the junction from seeing traffic approaching the junction down Dunearn Road.

The taxi in which the plaintiff was a passenger was going along Dunearn Road towards the city. It passed the lights at the north-east corner of the junction and had gone about two-thirds of the way across the junction when it was hit in the middle of its near side by the lorry which had been travelling westwards along the south side of Whitley Road and had passed the lights at the south-east corner of the junction. The point of impact was in the south-east portion of the junction some 25 to 30 feet to the west of these lights.

On 20th June 1967 the appellant issued the writ in this action joining both the lorry driver and the taxi driver as defendants. In his statement of claim delivered the same day he gave the following particulars of negligence on the part of the lorry driver and the taxi driver respectively. As regards the lorry driver

(a) Failing to keep any or any proper look-out

(b) Driving at an excessive speed in the circumstances.

(c) Driving from a minor road on to a major road when it was unsafe so to do and without regard for traffic on the major road.

(d) Failing to give any or any proper warning of his approach or his intention to drive on to the said major road.

(e) Failing to give way to vehicles travelling on his right.

(f) Failing to apply his brakes in time or at all or so as to steer or control his lorry as to avoid the said collision.

(g) Driving against the traffic lights.

As regards the taxi driver

(a) Failing to keep any or any proper look-out

(b) Driving at an excessive speed in the circumstances.

(c) Failing to give any or any proper warning of his approach.

(d) Driving against the traffic lights.

(e) Failing to apply his brakes in time or at all or so as to steer or control his taxi as to avoid the said collision.

By their defences each defendant denied that he was guilty of any negligence and alleged that the accident was caused by the negligence of the other defendant; alternatively each alleged that the negligence of the other contributed to the accident. Neither alleged that the traffic lights were defective in any way.

The plaintiff called as one of his witnesses a police corporal Abdullah bin Rahmat who said that he arrived at the scene of the accident at 8.45 a.m. and gave evidence as to the damage to the vehicles. In cross-examination by counsel for the lorry driver he said that the traffic lights were not functioning properly. Those facing Whitley Road turned from green to yellow and back to green without turning red. Those facing Dunearn Road changed in the proper sequence but the changes were very quick. He said that at one stage all the traffic lights at the junction showed green at the same time. In answer to counsel for the taxi driver he said that he had not made a report on the lights because when he returned to the police station he found that another police constable Say Lip Buck had already made a report. In re-examination he said that the lights facing Whitley Road stayed green longer than they stayed yellow, that the lorry driver had told

him that the lights were green and that neither driver complained to him about the state of the lights though he pointed out their condition to them. The plaintiff said in his evidence in chief that he was in the front seat of the taxi beside the driver, that as he approached the intersection the traffic lights were green and that he noticed nothing unusual about them, that the taxi was travelling at 40 miles an hour, that he saw a lorry coming from Whitley Road on his left side, that it too was travelling at 40 miles an hour and that it collided with the taxi. In answer to questions by counsel for the lorry driver he said that he was 15 yards away from the lights when he first saw that they were green, that he never saw them any other colour than green, and that the lorry was about 10 yards from the junction when he first saw it. The lorry driver called as a witness police constable Say Lip Buck. He said that at about 7 o'clock that morning he found that the traffic lights at the two junctions — the Dunearn and Whitley Road junction and the Bukit Timah and Whitley-Stevens Road junction — were out of order, — the Dunearn and Bukit Timah lights functioning in proper sequence but faster than normal, the Whitley and Stevens Road lights changing from green to amber and back to green. The traffic was jammed up and after reporting the matter he took control of the traffic at the Bukit Timah junction until relieved about 7.30. The lorry driver himself said in his evidence that he only began to look at the traffic lights when he was about 40 to 50 feet away from the junction, that they were then green, that he slowed down as he approached the junction to a speed of 15 miles per hour, that when about 15 feet from the traffic lights he saw they were still green, that he then accelerated and that when he was about 12 feet within the junction he heard the sound of a blast of wind coming from his right. He then applied his brakes and swerved to the left but could not avoid the collision. He further said that at the time of the accident there was no traffic jam at the Dunearn Road junction and indeed no traffic around at all.

The taxi driver elected not to give evidence and his counsel submitted that there was no case against him for him to answer.

Buttrose J. said that he accepted the evidence of the police witnesses as to the condition of the lights but that to say — as he understood counsel for the lorry driver to be submitting — that because both traffic lights were not functioning properly or were even both showing green at the material time the defendants should be absolved from all blame was to take a "too superficial and too simplified" view of the situation. His judgment then proceeded as follows:

"That the traffic lights controlling the entire junction were defective and not functioning properly was palpably obvious to anyone approaching it be he pedestrian or motorist. The police officers who arrived at the scene had no difficulty in noticing this state of affairs and in fact one of them, P.C. Buck, to whose evidence I have had occasion to refer, said that on his arrival because of the faulty traffic lights cars, to use his own words, were all tangled up at the Bukit Timah/Stevens Road junction.

A situation had therefore arisen which called for the exercise of the utmost care and caution.

If the defendants had been keeping any or any proper look-out they must, in the view I take, have seen that their appropriate traffic lights were not functioning properly and were out of order which should have at once put them on their guard and warned them of the danger of proceeding across the junction until they were satisfied that it was safe to do so. So, far from this objective being achieved, they blithely carried on regardless apparently of any traffic approaching them on a course which must inevitably lead to a collision.

Not only were the traffic lights at the junction visible from a long way off in either direction but also traffic approaching it down Dunearn Road could clearly be seen for a considerable distance by motorists approaching it along Whitley Road and vice versa. There was nothing to impede the view of either of the defendants.

The remarkable feature of the 1st defendant's evidence was that he only noticed the traffic lights first when he was but 15 feet from the junction. I do not accept or believe this evidence. Even more astonishing was his statement that as the lights were green he accelerated his lorry to cross the junction and it was not until he had actually proceeded some 15 feet across it (*i.e.*, into Dunearn Road) that he first became aware of a vehicle bearing down on him from his right.

He didn't even see it but said he heard a sound of a strong blast of wind — like the sound of an oncoming vehicle. He maintained he applied his brakes, although no brake marks were discernible on the road surface and swerved to the left. The damage to the vehicles clearly points to the fact that it was the 1st defendant's lorry which hit the near side of the taxi — the front near side door of the taxi being displaced and the rear near side door dented.

I did not have the advantage of hearing the 2nd defendant's version of the accident as he was not called for the reasons I have stated. The plaintiff's evidence added very little to the picture but as he was merely a passenger that is perhaps not surprising. He also failed to see the lorry until it was inside the junction and almost on top of him.

Another extraordinary feature of the case was that the question of the traffic lights being defective was first raised, so it would appear, at the trial and then by the 1st defendant's counsel in cross-examination of a police corporal called by the plaintiff. Mr. Yap also called further police evidence as to the lights being out of order and this despite the fact that his client maintained that they were in order.

Neither of the defendants said a word about it in their police reports or in their pleadings although their attention was specifically drawn to the matter by the police corporal who arrived on the scene shortly after the accident occurred.

Both the defendants, in my judgment, were guilty of negligence in failing to keep any or any proper look-out and in failing to drive their respective vehicles with that degree of care and caution which the circumstances of the case obviously required and the situation demanded.

The further question which arises is as to the degree of their culpability. In my view the greater blame is attachable to the 1st defendant. He was proceeding from a minor road out on to a one way major road which takes virtually the whole of the city bound traffic coming from north of the junction.

He was not concerned therefore with any traffic coming from his left but only from his right to which it was his duty to give way and on his own showing he never saw the taxi until the collision had to all intents and purposes taken place.

The 2nd defendant, on the other hand, was travelling down this one way major road and whatever the situation which arose would anticipate traffic on his left giving way if a collision appeared imminent by the two vehicles keeping on their respective courses. The 2nd defendant did apply his brakes as the 29 feet 7 inches brake marks on the road surface clearly indicate. I consider that the rapid changing of his appropriate traffic lights albeit in proper sequence should have been almost as effective a warning that something was wrong as the absence of any red light showing should have been to the 1st defendant.

Giving the best consideration I can to the materials before me I apportion the blame as to 75 per cent on the 1st defendant and 25 per cent on the 2nd defendant."

It is to be observed that the judge was wrong in saying that the lorry driver had said that he was only 15 feet from the junction when he first noticed the traffic lights. His evidence was that he was 40 to 50 feet away from the junction when he noticed them.

The Federal Court after pointing out that though there was evidence which the judge was entitled to accept that the traffic lights were out of order there was no evidence that either driver knew them to be out of order proceeded to consider the crucial question in the case — namely whether one or other or both drivers ought to have realised that they were out of order. They dealt with this question as follows:

"The trial judge also found it was 'palpably obvious to any one approaching it be he pedestrian or motorist' that the traffic lights controlling the entire junction were defective and not functioning properly because the police officers who arrived at the scene had no difficulty in noticing that state of affairs and because earlier on cars were all tangled up at another parallel junction controlled by a similar set of traffic lights. We find great difficulty in understanding how the trial judge arrived at this finding as on the plaintiff's own evidence he himself noticed nothing unusual about the lights. The real question to be decided on this aspect of the case was whether either of the defendants knew or ought to have known, if he had kept a proper look-out, that the lights controlling his entry into the junction were defective and not functioning properly.

In the case of the 1st defendant, on the evidence, it was impossible to say that it was palpably obvious to him, a motorist, that the lights controlling his entry into the junction were defective and not functioning properly. Nor was it possible, on the evidence, to say that if he had kept a proper look-out he would have seen or would have been aware that these lights were not functioning properly.

In the case of the 2nd defendant, the evidence is different. The lights controlling his entry into the junction were changing rapidly, albeit in proper sequence, from green to amber to red to green to amber to red and so on. It may well be if there was sufficient evidence it could be held that had he kept a proper look-out in relation to the lights controlling his entry he would have noticed this malfunction and noticing this ought to have taken the necessary precautions when entering this cross-roads junction at a time when to his knowledge the lights controlling it were not functioning properly. He chose not to give evidence and there is therefore no evidence at all as to when he first looked at the lights when approaching the junction. On the other hand there is no evidence as to the extent of the malfunctioning of the lights controlling his entry into the junction. The only evidence is that the lights 'changed rapidly' in its proper sequence. How rapid this change was at the material time no one knows and it would be idle and wrong to speculate. It was for the plaintiff to prove that the change was so rapid that the 2nd defendant must have known the traffic lights controlling the junction were defective if he had kept a proper look-out. The case as pleaded by the plaintiff against him was in the usual common form and the case against him at the trial appeared to be that although he entered the cross-roads junction with the traffic lights in his favour he was driving at an excessive speed in the circumstances and failed to see the lorry, coming from his left, entering the junction at the same time in spite of the lights being against the lorry. On the pleadings and on the case as presented at the trial against the 2nd defendant we are of the opinion that the plaintiff cannot succeed against him and the trial judge was wrong in holding him negligent and blameworthy to the extent of having to bear 25 per cent of the blame for the injuries sustained by the plaintiff.

The result is unfortunate but we have here a case where the plaintiff was alleging that either the lorry driver or the taxi driver or both were responsible for the accident. He had therefore to prove a state of facts from which the reasonable inference to be drawn was that *prima facie* one if not both drivers had been negligent before he is entitled to call on both defendants for an answer. To make a *prima facie* case he must prove facts from which in the absence of an explanation liability could properly be inferred. In the case of the taxi driver, the 2nd defendant, in whose taxi he was at the time of the accident, his evidence proved that the 2nd defendant was not to blame for the accident. In the case of the lorry driver, the 1st defendant, the evidence at the trial clearly establishes that no blame could be imputed to him for the accident."

In both courts below and before the Board reliance was placed in support of the contention that neither driver was guilty of negligence on the decision of the English Court of Appeal in *Joseph Eva, Limited* v. *Reeves*[1] and before the Board counsel for the lorry driver further relied on the decision of the Court of Session in *Wilson* v. *West and the Western S.M.T. Company Limited.*[2] Their Lordships do not think that either of these cases affords any help in this case. In *Eva* v. *Reeves* the lights were functioning properly and the case simply shows that a driver who enters properly on to a crossing controlled by lights when the lights are in his favour is under no duty to anticipate the possibility that another driver may enter the crossing improperly against the lights facing him. In the Scottish case a police officer had taken temporary control of the traffic at the crossing but the lights had not been switched off. One of the vehicles involved in the collision entered the crossing because the police officer waved him on. The other vehicle entered the crossing because the lights facing it were green and owing to the unfortunate position at which the police officer had chosen to station himself the driver could not see him and so did not realise that he ought not to rely on the lights. That case shows that it is possible for a collision to take place on a crossing controlled by lights without either driver being to blame; but neither of the cases helps to answer the crucial question in this case — to which their Lordships now turn — namely whether either the taxi driver or the lorry driver or both of them should have realised that the lights were out of order and that whatever colour they might happen to be when they passed them it was their duty to proceed with caution because of the possibility that a vehicle might enter the crossing from the other road at the same time.

According to the evidence the traffic lights facing the taxi driver were changing colour very quickly; he was driving down a straight road; and there was nothing to obstruct his view of the lights. If he had been keeping a proper look-out he would — one would suppose — have realised that the lights were out of order and have slowed down at the crossing — but in fact he continued to drive on to the crossing at about 40 miles an hour. In the absence of any evidence from him as to when he first saw the lights and what impression they made on him the natural inference is that he was not keeping a proper look-out and that his failure to keep a proper look-out caused or contributed to the accident. The Federal Court in the passage in their judgment which has been quoted above attach importance to the fact that the plaintiff said in evidence that he noticed nothing unusual about the lights. But

the plaintiff was a passenger who was under no duty to keep the lights under observation and he said that he was no more than 15 yards away from them when he first saw that the light was green. Their Lordships do not think that his evidence is inconsistent with the judge's finding that the taxi driver should have realised that the lights were out of order. Their Lordships also are unable to agree with the view expressed by the Federal Court that the plaintiff in order to succeed should have adduced evidence to the effect that the lights were changing so quickly that the taxi driver if he was keeping a proper look-out must have realised that they were not functioning properly. On the evidence of the police officers coupled with the failure of the taxi driver to give any evidence himself the judge was in the view of the Board justified in drawing the inferences that he did draw.

The lorry driver said in evidence that as he approached the lights he slowed down to about 15 miles an hour but that as he saw that the lights were green he accelerated as he entered the junction. The plaintiff on the other hand said that the lorry was travelling at about 40 miles an hour from the time when he first saw it when it was some 10 yards from the junction until it collided with the taxi. The judge who saw and heard both witnesses plainly preferred the evidence of the plaintiff to that of the lorry driver. He made a mistake in saying that the lorry driver had said that he was only 15 feet from the junction when he first saw the lights. But the mistake did not vitiate his conclusion for if the lorry driver only saw the lights when he was 40 or 50 feet from the junction — which is what he said in his evidence — it is clear that he cannot have been keeping a proper look-out. It is true that the defect in the lights facing the lorry driver — namely that they never showed "red" — was. perhaps, not so immediately obvious as the defect in the lights facing the taxi driver. It is therefore possible that a driver who was keeping a proper look-out and had the lights under observation for a considerably longer period than the lorry driver might not have realised that there was anything wrong with them before he passed them. But the lorry driver who on his own evidence was not keeping a proper look-out cannot shelter behind this possibility and their Lordships are of opinion that on the evidence before him the judge was justified in holding not only that the lorry driver was not keeping a proper look-out but that on the balance of probability his failure to do so was a contributory cause of the accident.

The judge apportioned the blame as to three quarters to the lorry driver and only one quarter to the taxi driver because Dunearn Road was admittedly the major road and if the crossing was viewed as an uncontrolled crossing the drivers of vehicles coming along Whitley Road owed a higher duty of care than the drivers of vehicles coming down Dunearn Road. Their Lordships are not sure that had they been trying the case they would in all circumstances have attributed so much of the blame to the lorry driver but it is only in exceptional circumstances that an appellate court is justified in interfering with an apportionment of liability made by the trial judge (see *The Macgregor*[3]) and such circumstances do not exist here.

Accordingly their Lordships direct that the judgment of the Federal Court be set aside and that of Buttrose J. restored and that the respondents pay the costs incurred by the appellant before the Federal Court and in their appeal to the Board.

Appeal allowed.

Solicitors: *Le Brasseur & Bakley* agents for *Murphy & Dunbar; Berrymans* agents for *Hilborne & Co.; Speechly Mumford & Soames* agents for *Battenberg & Talma.*